

THE HONORABLE MARY JO HESTON

Hearing Date: June 1, 2023

Hearing Time: 1:00 p.m.

Hearing Location: Tacoma

Response Date: May 25, 2023

Dorothy A. Bartholomew
WSBA No. 20887
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**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re:

Chapter 13

DOUGLAS RICHARD RADCLIFFE,

No. 22-41483-MJH

Debtor.

NOTICE OF HEARING AND MOTION FOR
ORDER ESTABLISHING DEBTOR'S
INTEREST IN REAL PROPERTY AND
DIRECTING HSBC BANK USA, N.A., TO FILE
ITS PROOF OF CLAIM

PLEASE NOTE that the debtor's Motion for Order Establishing Debtor's Interest in
Real Property and Directing HSBC Bank USA, N.A., to File its Proof of Claim is SET FOR
HEARING as follows:

JUDGE: **MARY JO HESTON**

TIME: **1:00 P.M.**

PLACE: **1717 PACIFIC AVENUE
TACOMA, WA 98402
COURTROOM H**

DATE: **JUNE 1, 2023**

IF YOU OPPOSE THE MOTION, you must file your written response with the Clerk
of the Court, serve two copies on the Judge's Chambers, and deliver copies to the undersigned
and to the debtor not later than the response date, which is May 25, 2023.

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IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its
discretion, GRANT THE MOTION AND APPLICATION PRIOR TO THE HEARING,
WITHOUT FURTHER NOTICE, and strike the hearing.

MOTION

COMES NOW THE DEBTOR, through counsel, and moves the Court to Enter an
Order Establishing Debtor's Interest in Real Property and Compelling HSBC Bank USA, N.A.,
as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered
holders of ACE Securities Corp. Home Equity Loan Trust, Series 2007-HE5, Asset Backed
Pass-Through Certificates [herein after referred to as "HSBC Bank"] to file its proof of claim.

In support of this Motion, the attorney pleads as follows:

1. The debtor petitioned for relief under Chapter 13 of the Bankruptcy Code on November 15, 2022.
2. At the time of filing, the debtor claimed an interest in real property located at 4304 162nd Street East, Tacoma, WA 98446.
3. HSBC Bank completed a non-judicial foreclosure sale on November 14, 2022.
4. Although a trustee's sale was conducted, when Debtor filed this instant chapter 13, a trustee's deed had not been delivered nor recorded.

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5. RCW 64.04.010 directs that “every conveyance of real estate, or any interest therein . . .

shall be by deed.” RCW 61.24.050(1) provides:

Upon *physical delivery* of the trustee’s deed to the purchaser . . .
the trustee’s deed shall convey all of the right, title, and interest
in the real and personal property sold at the trustee’s sale which
the grantor had or had the power to convey at the time of the
execution of the deed of trust . . . [I]f the trustee accepts a bid,
then the trustee’s sale is final as of the date and time of such
acceptance *if* the trustee’s deed is *recorded* within fifteen days
thereafter.

RCW 61.24.050(1).

“Thus, under Washington law, the general rule is a transfer of an interest in real
property cannot occur absent delivery of a deed.” *In re Lopez*, 596 B.R. 371, 373
(2019).

6. In *Lopez*, a bankruptcy debtor in the Eastern District of Washington was faced with the
same issue as the debtor in this case. In *Lopez*, the trustee held a trustee’s sale of the
home on November 30, 2018, at 10:20 a.m. Later that same day, at 2:21 p.m., Mr.
Lopez filed a chapter 13 bankruptcy petition before the trustee could deliver a trustee’s
deed. The court concluded that since the foreclosure trustee did not deliver a trustee’s
deed to the purchaser before Mr. Lopez filed his bankruptcy petition, Mr. Lopez
retained an interest in his home. *In re Lopez*, 596 B.R. 371, 374 (2019).

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7. Here, the same is true. HSBC Bank conducted the trustee sale on November 14, 2022.

When the debtor filed chapter 13 on November 15, 2022, to the debtor's knowledge and belief, a trustee deed had not been delivered. Moreover, a trustee's deed has never been recorded. Therefore, the debtor still possesses an ownership interest in the real property.

8. Until HSBC Bank files its proof of claim, the debtor is unable to present a confirmable plan.

9. The debtor now requests that this Court direct HSBC Bank USA, N.A., to file a proof of claim that contains an itemization of amounts delinquent.

10. The debtor requests that the Court enter an order directing HSBC Bank USA, N.A., to file its proof of claim within 15 days.

WHEREFORE, the debtor respectfully requests that this Court enter an order establishing that debtor holds an ownership interest in real property located at 4304 162nd Street East, Tacoma, WA 98446, and for an order directing HSBC Bank USA, N.A., to file its proof of claim.

DATE: May 3, 2023

/s/ Dorothy A. Bartholomew

Dorothy A. Bartholomew

WSBA No. 20887

Attorney for Douglas Richard Radcliffe